IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8368 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Petitioner(s)
Versus
NATWARLAL MOHANLAL SHAH - Respondent(s)

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Appearance :
MR MENGDEY, AGP for Petitioner(s) : 1,
MR DHIRENDRA MEHTA for Respondent(s) : 1,
NOTICE SERVED for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 21/09/2006

ORAL JUDGMENT

1. The short facts of the case are that on 17.2.1979, the proceedings of inquiry for the

Songadh City Survey being CTS No.24 were initiated and the Inquiry Officer had declared that the land bearing No.39 admeasuring 809.37 sq. mtrs., is of ownership of Shri Natwarlal Mohanlal. The matter was carried before the Dy. Collector by Shri Natwarlal Mohanlal Shah–respondent herein being CTS No.2 of 1979 and the Dy. Collector Vyara in the order dated 9.7.1979 found that there is some over-writing qua the area of the land and, therefore, cancelled the order of the Inquiry Officer and remanded the matter. It appears that thereafter the City Survey Officer examined the matter and found that there is over-writing of the are over the area and there are erosions and abrasions in the measurement of the land and he found that it is not clear as to what exactly the area was being held and further the land was granted on lease for 30 years and the sale had taken place without prior permission. Therefore, he passed the order on 25.7.1983, whereby he declared the ownership of the land as that of the State Government and further declared that the

respondent has made encroachment over the said land. The respondent carried the matter before the Dy. Collector in Appeal No.148 of 1983. However, the said appeal was dismissed as per the order dated 4.6.1984. The respondent further carried the matter before the Collector being Appeal No.100 of 1985 and the District Collector also as per the order dated 4.4.1985 dismissed the appeal. The respondent further carried the matter before the Gujarat Revenue Tribunal being No.TNAS No.3/85 and the Tribunal as per the judgement dated 25.8.1989 allowed the revision and set aside the order passed by the Mamlatdar and City Survey Officer, its confirmation thereof by the Dy. Collector and the Collector and declared that the appellant is the owner of land S No.1320 admeasuring 9 gunthas - 1089 sq. yards. It is under these circumstances, the State Government has approached this Court by preferring the present petition.

2. I have heard Mr.Mengdey, learned AGP for the petitioner, State of Gujarat, and I have also

heard Mr.Mehta, learned Counsel for the respondent.

3. Upon the earlier order passed by this Court, the Asst. Government Pleader was directed to make the original record available for the perusal of the Court and the same is also considered being relevant while deciding the matter.

4. The perusal of the original record, which is also shown to the learned Counsel appearing for the respondent, shows the following aspects:

(i) In Village Form No.2 being maintained for the year 1949-50 onwards, entry no.258 refers to the land in question, which was initially in the name of Kushaldas Makhandas Gandhi. There is ex-facie erosion in the column of the measurement and thereafter writing of the area 1089 is mentioned. In the column of time limit being column No.7 and 8, it is mentioned of 55-56 to 30 years.

(ii) In Village Form No.6 entry No.134 dated 12.3.1961 is mutated and it shows that originally area mentioned was 333 sq. yards. The effect of the ink is diluted at the portion

where the area was mentioned and thereafter the area is over-written as 1089 sq. yards. The pertinent aspect is that the effect is not diluted to the extent that the original area mentioned cannot be read and, therefore, it is apparent that the original area was 333 sq. yards which was mentioned and the effect of the ink is diluted. The aforesaid original record was also shown to the learned Counsel appearing for the respondent. The aforesaid entry is for succession of the land from Kushaldas Mohandas Gandhi to Mohandas Kushalbhai.

(iii) In the another register for Village Form No.6, there is the entry No.225 for the land in question for the sale dated 23.3.1965 and in that entry also over the measurement there is erosion and the effect is substantially diluted and over-writing is made of the area of 1089. This entry is for sale of the land by the original holder in favour of the respondent and is by oral sale upon recording of the statement.

(iv) It is an admitted position that there is no registered document of sale.

5. In normal circumstances, this Court while exercise of power under Article 227 of the Constitution of India would be at loath to examine the original record, its appreciation and/or reappreciation. However, as the matter pertained to tampering with the Government record, more particularly in the measurement of the land in question and as recorded by the Tribunal itself, the original record was also made available to the Tribunal, it was found proper by this Court to consider the same as per the order passed earlier to call for the original record. The perusal of the aforesaid record shows that the original area mentioned was 333 sq. yards and there is over-writing by making it 1089 sq. yards. It appears that the Tribunal in the impugned order has recorded at para 5, inter alia, that the Talati had appeared with the record and produced the record and the Tribunal has further recorded that the man from City survey Office had appeared with the record and shown the record. In spite of the aforesaid position of the original record as mentioned

hereinabove by this Court, the Tribunal has, ex facie, wrongly recorded that there were no alteration in this record produced by Talati. It appears that in spite of the aforesaid position in the later portion of para 5, the Tribunal has observed that the entries of alterations are not produced to show in what manner the alterations are made. It is further observed by the Tribunal that if the record was so important that it could not be produced, he should have produced photo copies of the record, so that the Court can come to the conclusion as to in what way the alterations were made and the same has not been done. The aforesaid finding of the Tribunal on the face of the earlier recital of the production and the original record is factually incorrect and this shows ex-facie not only error apparent on the face of record, but it can rather be said as the jurisdictional error in not considering the original record produced before the Tribunal during the course of the hearing for proper adjudication of the matter, when the gist of the

matter was as to whether any alteration is made in the original record or not and, if yes, what could be the correct area as per the original record.

6. The Tribunal further proceeded on the basis that in the certified copy, which was produced before the Collector for grant of permission, the same alteration was not reflected. As the District Collector had granted permission for construction of cinema hall of 4 gunthas the claim of the petitioner before the Tribunal – respondent herein, was accepted. As against the same, it has also been observed by the Tribunal, by self-contradictory finding, that even if the conclusion of the Mamlatdar was right, he should have accepted the claim of the appellant over the 3 gunthas and 363 sq. yards of the land. Merely because the right of the applicant was considered for the area of 333 sq. yards (it is wrongly mentioned by the Tribunal as 363 sq. yard), it cannot be said that since the right was not accepted up to that extent the application before the Tribunal – respondent

herein was entitled to the declaration of the area of 1089 sq. yards. The aforesaid approach on the part of the Tribunal is ex-facie erroneous.

7. As such in view of the perusal of the original record read with the observations made by the lower authority, it appears that at the most the respondent could establish the purchase of the land held by the original holder, which was 333 sq. yards and the respondent is not entitled to the benefit of tampered record, whereby the original area of 333 sq. yards is converted into 1089 sq. yard. The other aspects of holding of the property on lease basis for a period of 30 years, its effect upon the purchase of the property by the respondent and consequently the action or otherwise, in my view was not the real subject matter of the inquiry before the City Survey Officer and the authority, who considered the matter thereafter in the proceedings of the appeal, the reason being that even if the limited right, which the respondent may be holding over the land, the clarification could

have been made in this regard and the real scope of inquiry was holding of the property, its area and the acquisition of the right by the respondent of the original holder of the land. Of course, the respondent cannot have better rights or title in the land than it was held by the predecessor in title or original holder of the land, but such aspects will be required to be examined only if the question arises for termination of the lease or getting back the possession of the land upon the expiry of the lease period or otherwise.

8. In view of the aforesaid observations, it appears that the right of the respondent – petitioner before the Tribunal qua the land in question at the most could be maintained to the extent of 333 sq. yards and the City Survey Officer's order was justified to the extent of the remaining area for declaring that the same is a Government land. Therefore, as the Tribunal has committed ex-facie error on the face of record and has also committed jurisdictional error, the order of the Tribunal

deserves to be modified to that extent.

9. The learned Counsel appearing for the respondent, Mr.Mehta vehemently contended that the impugned order is passed by the Tribunal in August 1989, whereas the petition is preferred by the State Government in may 1994, after about more than 4½ years' delay and, therefore, this Court may reject the petition on the ground of delay and it was also submitted that such a long delay may not be leniently viewed by this Court, more particularly when there is no explanation given in the petition for delay. Mr.Mengdey, learned AGP is not in a position to show any averments made in the petition for explaining the delay.

10. However, it appears that the matter came to be entertained by this Court as back as on 30.12.1994 and thereafter was admitted on 31.3.1995. Therefore, when the matter is admitted and after a period of 11 years the same is being considered for final disposal, I find that it would not be a case for rejecting the petition on the ground of delay, more

particularly when on merits this Court has found that the Tribunal has committed ex-facie error and the order of the Tribunal deserves to be modified. In the matter of delay caused in preferring the petition, if on merits the Court finds that a serious or great injustice is caused, the Court may also examine the matter on the aspect as to whether the rights of the parties are altered during the period of delay and whether the delay can be compensated by awarding appropriate amount of cost.

11. The property is still in the same position as it was in the year 1989 when the Tribunal passed the order and when this Court entertained the matter in the year 1994 for the first time. However, there is ex-facie callous and lethargic approach on the part of the State Government in pursuing the matter and the same is apparent in as much as in spite of the order passed in the year 1989, for a period of more than 4½ years no steps were taken for preferring the petition before this Court, though on merits, the Government had good case to challenge the order

of the Tribunal. Even while filing the petition no circumstances are narrated leading to delay in filing the present petition. In absence of the proper material before this Court, it is not possible by this Court to conclude regarding the callous or lethargic approach on the part of a particular officer. However, it can be said that concerned officer of the Government has taken a callous and lethargic approach in preferring the petition. Therefore, even if the compensation is awarded for the delay in preferring the petition, it would be for the Secretary of the State Government to examine the matter and to fasten the responsibility upon erring officer, if ultimately it is found that the officer had carelessly persuaded the matter and there was no proper action well in time.

12. Considering facts and circumstances and the subject matter of the petition, I find that if the petitioner Government pays the amount of Rs.10,000/- to compensate the delay, caused in preferring the present petition, the same would meet with the ends of justice. However, as

stated hereinafter, the amount of Rs.10,000/- for the present shall be paid by the State Government, but the inquiry will be held against the erring officer and the appropriate action shall be taken for recovery of the amount in the event it is found by such inquiry officer that the delay was caused on account of the callous or lethargic approach on the part of a particular officer concerned.

13. In view of the aforesaid observations and discussions, the impugned judgment and order of the Tribunal is quashed and set aside to the extent that the order passed by Mamlatdar and its confirmation thereof by the Deputy Collector and Collector shall continue to operate qua the land admeasuring 756 sq. yard and so far as the land admeasuring 333 sq. yards is concerned, the respondent would continue to hold the land but not as an owner as declared by the Tribunal, but shall continue to hold the land as it was held by the predecessor in title of the respondent viz. Mohanbhai Kushalbhai. The aforesaid

direction shall be on condition that the State Government within the period of 8 weeks from today, pays the amount of Rs.10,000/- to the respondent as compensation for delay caused in preferring the present petition. The petition shall stand partly allowed to the aforesaid extent. It is further directed that Secretary, Revenue Department of the State of Gujarat either himself or through officer not below the rank of Joint Secretary shall hold an inquiry for the callous or lethargic approach on the part of the concerned officer in preferring the present petition in accordance with law and if as an outcome of the said inquiry, it is found that there was any callous or lethargic approach on the part of the concerned officer which resulted delay, the State Government shall recover the amount of Rs. 10,000/- from the concerned erring officer. It is also made clear that in the event, such an inquiry is held, all rights and contentions as may be available in law of the concerned officer shall remain open.

14.Rule partly made absolute accordingly. Considering the facts and circumstances, there shall be no order as to costs.

20.6.2006 **(Jayant Patel, J.)**

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